

MONTANA TECH COUNCIL

A&E Division Task Force Meeting #2

November 20, 1997

Previous Meeting: 22 October, 1997

Topics for Discussion:

- Design-Build
- Communication with A&E Division
- Contracts
- Selection Process
- OCP Insurance
- Project Budgets
- On-Site Owner's Rep
- Construction Management
- Commissioning
- Retainage
- E&O Policy
- Delegation of Projects
- Form 114/115 vs. 254/255
- Travel Expenses
- Design Fees
- Evaluation of A/E Services
- Construction Administration Services
- Site Visits
- Differing Business Practices
- Website
- A&E Staff Shortage

Priorities: Contracts, Delegation of Projects

Contracts - discussion centered around some contract language which is perceived by A/E firms to be onerous toward their profession including the NCLC contract. Copies of A&E's standard contracts were distributed at the last meeting.

Delegation of Projects - discussion directed toward issues concerning mostly projects delegated by A&E Division to the Montana University System.

A&E Division Summary of Topics:

Design-Build Contracting -

The DB method of project delivery is acceptable to A&E. In fact, there is a 70+ page DRAFT manual on implementation of this method. However, changes in construction law will be required in the next session and it is anticipated that projects will be evaluated on a careful case-by-case basis for use in DB.

Communication -

Assistance is required from the profession to clarify this issue.

Contracts -

A&E contracts are constantly reviewed and revised based upon current construction trends and case history as it becomes available. The attempt is to develop standard design services contracts for Architects and Engineers which define responsibilities and allocate liabilities in the appropriate places. It is A&E's desire that the standard contract be used by all agencies involved in construction.

Selection Process -

The selection process current requires short-listing and interviews for projects over a nominal \$250,000 and appointment from a list of three provided by the using agency for projects under the nominal \$250,000.

OCP Insurance -

A&E Division removed the requirement for construction contractors to provide the Owner with an OCP policy but to have the State listed as an additional insured on the general liability coverage. Apparently, A/E firms object to this since the previous requirement specified for the design firm to be listed as an additional insured on the Owner's OCP. This requirement was removed due to Risk Management Division's suggestion. The State would be double-covered for its own negligence and this is unnecessary. A/E firms are required by contract to cover their own negligence and there is no reason the State should pay additional coverage on an OCP or even having the design firms listed as additional insureds on the contractor's general liability.

Project Budgets -

A&E requires the design firm selected to maintain the entire project budget and not just the construction cost. Other issues concerning budgets need to be clarified by the Task Force.

On-Site Owner's Rep -

Due to limited staffing, A&E has decided to pursue on-site representation on a contractual basis independently of the design firm. To date, it is working satisfactorily and the concept is to provide a "third party" to protect the Owner's interest.

Construction Management -

This method of project delivery is not permitted by current statute but A&E is open to the concept on a case-by-case basis provided the project parameters are favorable in this regard. Construction law changes would be required.

Commissioning -

A&E is highly in favor of “commissioning” buildings and facilities by third parties to obtain the best possible operation of components in a holistic approach. This does not apply to every building or project. It may act on occasion as an independent quality check of both the designer’s work and that of the contractor but is more focused on making facilities function as intended.

Retainage -

Due to poor performance by some firms, A&E has a policy of withholding retainage on professional services contracts. It is realized that poor performance is not the case everywhere. However, in order to ensure performance and be equitable to all firms, the retainage is applied across the board. The amount is varied between 5% and 10% based upon the size of the project.

E&O Policy -

It is A&E’s desire that all firms carry E&O coverage. However, this is not practical for all designers and is not always necessary for every project. Therefore, A&E (in cooperation with Risk Management Division) has decided to investigate the need for E&O coverage and professional liability on a project-by-project basis.

Delegation of Projects -

A&E delegates projects to basically four entities (Department of Military Affairs, University of Montana, Montana State University, and the Department of Fish, Wildlife & Parks). These agencies are required to sign interagency agreements stating that they will comply with the law and all A&E requirements unless receiving a waiver (verbal or written). Projects are delegated for various reasons: funding source, staff size, nature of project, and/or agency desire.

Forms 114/115 vs. 254/255 -

At this time, it appears feasible that A&E can eliminate the use of 114 and 115 and substitute the Federal equivalents as they are essentially the same. However, this issue is still being investigated.

Travel Costs -

A&E has seen tremendous variance and increases in travel expenses in the past year. It is hopeful that a policy may be instituted where A&E will compensate for travel and a portion of travel time within a certain radius but firms who wish to perform work outside of this radius will do so at their own expense (i.e. only that portion of costs for being outside the agreed upon radius).

Fees -

Design fees are another area of increase where it appears the State is paying extremely high prices in some instances. This is due often to firm location, firm business practices, philosophy of service, etc.

Evaluation of A/E Services -

It is one of A&E's goals to implement an evaluation of services provided at the completion of each project. Such evaluation will be completed by A&E, the using agency and the firm itself. This is to remove those firms who do not perform well from consideration for future projects.

Construction Administration Services -

This area of service is a constant frustration for A&E. There are differing business practices occurring and it is often the State's perception that we are not being treated as a "customer" due to several factors: contractor cost overruns, delayed delivery, additional fee requests, etc. This does not apply to every firm but performance of the design professional is often lacking on most projects.

Site Visits -

It is A&E's position that regular site visits are compensable throughout the duration of the construction. However, when there are design issues, it is A&E's position that these are the responsibility of the design professional and should not be treated as a "monthly" trip. This includes change orders, resolution of design issues, design errors, etc.

Differing Business Practices -

As expected, all firms run their businesses differently. However, there appears to be a constant desire on the professional's part that A&E alter its methods of payment, contract clauses, etc. to coordinate with a firm's chosen method of practice. This causes considerable amounts of extra work, negotiations, and coordination issues for A&E. A&E has too many projects, too many firms, and too many contractors to alter its methods for every firm. It has to be essentially the way A&E practices or projects are affected in both time, cost, and complexity.

Website -

A&E is in the process of developing a website which will contain policies, project information, forms, schedules, RFPs, bid results, etc.

A&E Staff Shortage -

It is understood that A&E is short-handed and measures are being taken to help alter this situation.